



HUMAN RIGHTS

Judicial review of Canadian Human Rights Commission decision dismissing applicant's human rights complaint as trivial pursuant to *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA), s. 41(1)(d) — Applicant, Canadian citizen of Lebanese origin, boarded aircraft at Halifax International Airport — On airplane, told by flight attendant to remove jacket from empty seat — Applicant expressing displeasure with flight attendant — Exited airplane with Air Canada agent — Agent informing applicant that he would not be allowed to travel on flight due to his misconduct — Noting on applicant's Passenger Name Record that he had been "verbally abusive toward a flight attendant and gate staff", alerting Air Canada's corporate security — Air Canada subsequently imposing travel ban on applicant until he no longer presented risk — Applicant filing complaint with Commission alleging discrimination by Air Canada on grounds of race, national or ethnic origin, colour, or religion — Commission preparing screening report pursuant to CHRA, ss. 40, 41 (40/41 report) due to possible application of *Convention for the Unification of Certain Rules for International Carriage by Air*¹ (Montreal Convention) — Report recommending that Commission not deal with complaint because it could more appropriately be dealt with according to a procedure provided for under another Act of Parliament, and/or it was trivial and/or vexatious — Commission dismissing complaint based solely on application of Montreal Convention — Holding that, even if applicant's complaint well-founded, any meaningful remedy foreclosed by *Carriage by Air Act*, R.S.C., 1985, c. C-26 (CAA) — Finding that travel ban issued against applicant had been retracted, no longer in dispute — Also finding that applicant had received compensation for Air Canada's refusal to transport him — Whether Commission having power to interpret, apply law beyond its enabling statute — Commission reasonably holding that question of whether certain remedies precluded by CAA, Montreal Convention falling within powers, duties, functions conferred upon it by CHRA, ss. 41(1)(c),(d) — No dispute that Commission having power to determine legal questions pertaining to limits of its own jurisdiction — S. 41 mandating Commission to deal with any complaint unless complaint appearing to be beyond its jurisdiction — Commission having broad discretionary power, enjoying remarkable degree of latitude when performing its screening function — Whether Commission decision to dismiss complaint reasonable — Decision to dismiss applicant's complaint as trivial unreasonable — Despite adopting findings, analysis, conclusion of 40/41 report, Commission not considering whether remedies other than financial compensation appropriate in event that applicant's complaint upheld — This may be due to report's conclusion no practical remedy that Canadian Human Rights Tribunal could order for complainant — However, report's conclusion premised on full, final settlement of applicant's complaint — Applicant not having opportunity to respond to two issues based on Air Canada's *ex parte* submissions — Unreasonable for Commission to adopt finding in 40/41 report that corrective measures other than financial compensation would not be useful, only because applicant had not sought to include them in settlement — Complainant's preferences regarding remedies, corrective measures not binding either Commission or Tribunal — Both of these administrative bodies having independent power, duty to identify remedies appropriate in circumstances — Commission assuming that possible unavailability of financial compensation for breaches of human rights in context of international air travel bar to all meaningful remedies — Failing to consider whether other remedies might be appropriate — Matter remitted to Commission for redetermination — Application allowed.

ZOGHBI V. AIR CANADA (T-951-20, 2021 FC 1154, Fothergill J., reasons for judgment dated October 28, 2021, 25 pp.)

¹ Signed at Montréal, May 28, 1999, being Schedule VI to the *Carriage by Air Act*, R.S.C., 1985, c. C-26.